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SENATE

REPORT
102-6

STATUS OF CERTAIN RETIRED MEMBERS OF THE ARMED FORCES RECALLED TO ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

JANUARY 31 (legislative day, JANUARY 3), 1990.—Ordered to be printed

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Mr. NUNN, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S. 204]

PROVIDING FOR CERTAIN RECALLED RETIRED MEMBERS OF THE ARMED FORCES TO SERVE IN THE HIGHEST GRADE PREVIOUSLY HELD WHILE ON ACTIVE DUTY

The Committee on Armed Services reports favorably S. 204, with amendments, to provide certain improvements in military personnel policies for members of the armed forces performing service in connection with Operation Desert Shield, Operation Desert Storm, and for other purposes, and recommends that the bill do pass.

PURPOSE OF THE BILL

This bill would provide certain improvement in military personnel policies. These improvements are targeted primarily to active component personnel and National Guard and Reserve component personnel serving or activated for duty in Operation Desert Shield and Operation Desert Storm. The provisions of this bill complement the set of improvements for military personnel serving in Operation Desert Shield provided in the National Defense Authorization Act for Fiscal Year 1991.

COMMITTEE PROCEEDINGS

S. 204, introduced by Senator Glenn (for himself and others), to provide for certain recalled retired members of the armed forces to serve in the highest grade previously held while on active duty was

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considered favorably during the Committee's markup session on January 30, 1991.

SPECIFIC PROVISIONS

Section 1 of this bill would allow military personnel who are recalled to active duty to be recalled in the highest grade they held satisfactorily while on previous active duty. Currently, retired personnel who are recalled to active duty must be recalled in the grade in which they retired. There are some military personnel who have retired in a grade lower than the grade they held at the time of their retirement. This situation occurs when an individual chooses not to complete the three-years-service-in-grade requirement for retirement in the grade they held. The Committee believes that the service-in-grade rules for retirement are appropriate. However, the Committee believes the Defense Department should be given the flexibility to recall such individuals in the highest grade such individuals served in satisfactorily while on previous active duty as a matter of equity to fill requirements generated by contingencies such as Operation Desert Shield and Operation Desert Storm.

Section 2 makes these provisions effective as of August 2, 1990.

Section 3 of this bill would make it clear that the expenditures in this bill are emergency expenditures resulting from Operation Desert Shield and Operation Desert Storm as provided in the budget summit agreement. Emergency expenditures, whether related to these operations or not, are exempt from the relevant sequestration provisions if they are designated as emergency expenditures in statute. Section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.), as amended by Public Law 101-508, provides for the treatment of emergency discretionary expenditures, including those related to Operation Desert Shield. Section 252(e) of that act provides for the treatment of emergency direct spending. Defense discretionary expenditures that exceed the statutory cap in the Budget Summit Agreement (enacted as the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508) will trigger a sequester in order to keep defense discretionary expenditures at or below the cap. Expenses related to Operation Desert Shield are exempt from this cap, however. Any new direct spending legislation is subject to the pay-as-you-go sequester provisions of the budget agreement which require that spending legislation be deficit-neutral over a five-year period. Emergency expenditures are also exempt from this requirement.

The focus of this bill is on benefits for Desert Shield and Operation Desert Storm personnel in fiscal year 1991, which are exempt under the budget agreement. While there are expenditures beyond fiscal year 1991 authorized in this legislation, the Committee notes that none of these expenditures will have the effect of increasing defense spending above the levels in the budget agreement once Operation Desert Shield/Desert Storm is over, because any expenditures will be funded out of the total amount appropriated for defense each year. Those appropriations are constrained by the caps in the budget agreement, and those caps are not affected by this legislation.

COMMITTEE ACTION

In accordance with the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, there is set forth below the committee vote to report a bill to provide certain improvements in military personnel policies for members of the armed forces performing service in connection with Operation Desert Shield and Operation Desert Storm, and for other purposes.

In favor: Senators Nunn, Exon, Levin, Kennedy, Bingaman, Dixon, Glenn, Gore, Wirth, Shelby, Warner, Thurmond, Cohen, McCain, Wallop, Gorton, Lott, and Coats.

Opposed: None.

Vote: 18–0.

FISCAL DATA

Section 252 of the Legislative Reorganization Act of 1970 requires that the report accompanying each bill reported by a Senate committee contain certain information on five-year cost projections.

The letters received in compliance with this statutory requirement are shown below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE
Washington, DC, January 29, 1991.

Hon. SAM NUNN,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN. The Congressional Budget Office (CBO) has reviewed S. 204 as introduced on January 14, 1991. This bill would allow certain military retirees returning to active duty to return at the highest rank that they had previously held. The bill also would allow these retirees, upon re-retirement, to receive retired pay at the higher grade if they served in that grade for six months or more. The legislation would be retroactive to August 2, 1990. The cost to the federal government of this legislation is not likely to exceed $500,000 during fiscal year 1991. There would be no significant cost to state and local governments from enactment of this legislation.

Costs for Retirees Recalled to Date

Enctment of this legislation primarily would affect retired military officers of certain ranks. Under current law, an officer at rank O–5 or O–6 must serve three years in that grade before retiring in order for retirement benefits to be computed at that grade. Most officers fulfill this time-in-grade requirement. Though no precise count exists, there are probably only ten to twenty retirees each year (of a total of over 3000) that do not satisfy this requirement. Most of these are likely to be officers such as doctors whose potential private sector pay is high relative to military pay. Such people probably retire as soon as possible rather than remain in the armed services to increase future retirement benefits beyond what is available when they first become eligible for benefits.

To date, only 250 retirees have come back to active duty. CBO has been unable to determine precisely how many of these retirees

would be affected by the bill. Reportedly, not many of these are in the medical field and the CBO has been unable to determine how many are officers. The active duty pay differential between an officer of grade O–5 and of grade O–6 is approximately $6,000 a year. We assume that half or less of these retirees had retired without satisfying the time-in-grade criteria. Assuming an enactment date of March 1, 1991, the total cost from the retroactive active-duty pay they would receive would be less than $500,000.

This bill also would increase the retired pay of these retirees upon their release from active service if they had satisfactorily served in the higher grade for at least six months. Annual increased costs for retired pay would be only about half of the annual active duty pay differential.

Pay-As-You-Go Considerations

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. The retroactive pay from August 2, 1990 to the enactment date and the future higher retired pay costs of this legislation would be entitlements and therefore direct spending. Nevertheless, the total annual cost during this period would not round to $1 million.

Future Uncertainties

It is more difficult to predict the future cost if many more retirees are called back to active service. Depending on the course of the action, the military departments may need to call back retirees—especially those in the medical fields—to perform essential services. For the annual costs to exceed $500,000, however, over 80 of the retirees called back to active duty must have retired at a lower grade than that last held, and must serve on active duty for a full year.

I hope this information has been helpful. If you need further information about this estimate the CBO staff contact is Barbara Hollinshead, who can be reached at (202) 226–2840.

Sincerely,

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that a report on the regulatory impact of a bill be included in the report on the bill. The committee finds that there is no regulatory impact in the case of the bill reported by the committee.

CHANGES IN EXISTING LAW

Pursuant to the provisions of paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by certain portions of the bill have not been shown in this section of the report because, in the opinion of the committee, it is necessary to dispense with showing such changes in order to expedite the business of the Senate and reduce the expenditure of funds.

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